

ARTICLE APPEARED
ON PAGE A 40NEW YORK TIMES
8 December 1985

Court Holds Classified Data To a Stricter Legal Standard

RICHMOND, Dec. 7 (AP) — Judges must weigh possible harm to national security when they decide if classified material can be used in a trial, a Federal appellate court has ruled in an espionage case.

The 7-to-5 decision, issued Thursday by the United States Court of Appeals for the Fourth Circuit, bars Richard Craig Smith from using information on an alleged covert operation by the Central Intelligence Agency at his trial on espionage charges.

In the opinion, the majority said classified information must be judged by a stricter standard than other evidence, which is generally admissible if it is relevant.

"This certainly is a significant opinion that will have an effect on other espionage cases," said Joseph Aeronica, an assistant United States attorney. "I plan to use it in another case I have."

Mr. Aeronica is one of the prosecutors in the case of Larry Wu-Tai Chin, a retired C.I.A. analyst who was arrested Nov. 22 and charged with spying for China for the last 30 years.

Mr. Smith's attorney, William B. Cummings, could not be reached for comment. He was reported to be out of his office until Monday, but a man who answered the telephone said Mr. Cummings had not seen the opinion.

Mr. Smith, an employee of the Army Intelligence Security Command from 1973 to 1980, is charged with selling information about double agents to a Soviet agent for \$11,000. He was arrested in April 1984.

Mr. Smith, who has pleaded not guilty and is free on bond, does not dispute that he passed on the information, but he said he believed he was working secretly for the C.I.A. and sought to introduce information about a defunct investment firm in Honolulu, Bishop, Baldwin, Rewald, Dillingham & Wong.

Ronald R. Rewald, who contended that the firm was set up for C.I.A. covert operations, was convicted in October of fraud, perjury and tax evasion stemming from the firm's financial collapse.

Mr. Rewald said the C.I.A. promised to protect the firm from scrutiny and to use it for covert assignments. The intelligence agency has acknowledged that it used the firm to provide commercial cover for C.I.A. agents and that the firm provided telephone and telex services to the agency, but it has denied links to the firm's financial activities.

In a footnote, the appellate court described the information in question as "broad classes of information" about the firm, including evidence that it was used "as a C.I.A. cover organization" and that the intelligence agency deposited funds in the firm's account.

Federal District Judge Richard Williams and a three-judge panel of the appellate court ruled that Mr. Smith could present that information in defense of his claim that he worked for the C.I.A.

The Government then requested, and was granted, a rehearing before the full court.

The majority said Judge Williams was correct when he decided that the classified information was relevant to Mr. Smith's defense, but it said he should have gone further and considered if there was an overriding concern to keep the information secret.

"The Government has a substantial interest in protecting sensitive sources and methods of gathering information," the court said.

The dissenters drew a distinction between classified information a defendant wanted the Government to disclose and information that was already known to the defendant.